

10/14
10/15

Case No. TO-2000-322

ORDER DENYING MOTION
TO TAKE ADMINISTRATIVE NOTICE

On February 15, 2000, DIECA Communications, Inc., d/b/a Covad Communications Company (Covad), filed its Motion to Take Administrative Notice, requesting the Commission to take administrative notice of three attached documents pursuant to 4 CSR 240-2.130(1) and Section 536.070(6), RSMo 1994. The documents were described as: (1) an Interconnection Agreement between Ameritech Information Industry Services and Accelerated Connections;¹ (2) a Bell Atlantic filing before the Pennsylvania Public Utility Commission; and (3) an arbitration award in a case before the Texas Public Utility Commission. The third item is not in dispute and was an attachment to the direct testimony of a witness in this proceeding, Mr. Bernard Chao.

On February 18, 1999, Southwestern Bell Telephone Company (SWBT) filed its motion in opposition to Covad's motion to take administrative notice. SWBT opposed administrative notice of the interconnection

¹ This document is apparently applicable in the State of Illinois and is to be interpreted under that state's laws.

agreement and the filing by Bell Atlantic and also stated that the documents lacked a proper foundation for admission, represented hearsay, and that the documents were irrelevant to the proceeding before this Commission.

Administrative notice under Covad's motion is predicated on Section 535.070(6), which authorizes an administrative agency to take official notice of all matters of which a court may take judicial notice. Judicial notice is a practice where, without the production of evidence, a court will recognize the existence and truth of certain facts, having a bearing on the controversy at bar, which, from their nature, are not properly the subject of testimony, or which are universally regarded as established by common notoriety, e.g., the laws of the state, international law, historical events, the constitution and course of nature, main geographical features, and the like. It is the cognizance of certain facts, which judges and jurors may properly take and act upon without proof, because they already know them. *Black's Law Dictionary*, 6th Edition 1990.

The documents at issue do not represent matters or facts of which a court would take judicial notice. Furthermore, their relevance to this proceeding, if any, has not been demonstrated. These documents present matters that occurred in states other than Missouri, between entities not parties to this proceeding. The documents are very substantial and appear to have been presented in complex proceedings in other states. If Covad relied on these documents to present particular matters to this Commission, both the Commission and SWBT would be burdened to examine the full

complement of related documents and procedural histories to have a proper context to judge the weight, if any, to be accorded to such evidence. In addition, SWBT's hearsay and foundational objections are well taken. Therefore, Covad's motion will be denied.

IT IS THEREFORE ORDERED:

1. That the motion filed by DIECA Communications, Inc., d/b/a Covad Communications Company, titled Motion to Take Administrative Notice, is denied.

2. That this order shall become effective on March 7, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Keith Thornburg, Regulatory Law Judge,
by delegation of authority pursuant
to 4 CSR 240-2.120(1) (November 30,
1995) and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 24th day of February, 2000.